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|--|---------------|--------------------------|---------------------|------------------|
| 09/730,116 | 12/05/2000 | Robert Manuel Carmichael | 1064,8002 | 8544 |
| 44538 | 7590 | 03/11/2008 | | |
| DANIEL S. POLLEY, P.A. 1215 EAST BROWARD BOULEVARD FORT LAUDERDALE, FL 33301 | | | EXAMINER | |
| | | | VASUDEV, AJAY | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3617 | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | |
|------------------------------|--------------------------------------|--|
| Office Action Summary | Application No. 09/730,116 | Applicant(s) CARMICHAEL, ROBERT MANUEL |
| | Examiner Ajay Vasudeva | Art Unit 3617 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(o).

Status

1) Responsive to communication(s) filed on 12 December 2007.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 2-13 and 16-20 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) 9-11 is/are allowed.
 6) Claim(s) 2-6,12,13 and 16-18 is/are rejected.
 7) Claim(s) 7,8,19 and 20 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____

5) Notice of Informal Patent Application
 6) Other: _____

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent *and to prevent possible harassment by multiple assignees*. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s).

See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 2-6, 12 13 and 16-18 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 27-32 of U.S. Patent No. 6,527,480 B2 (Angelini et al.).

Although the conflicting claims are not identical, they are not considered to be patentably distinct from each other. Claims 27-32 in Angelini et al. ('480) recite a system comprising a weight receiving pocket, a weight member, a weight pouch, a first strap, and a second strap associated with the weight member. The claims also recite a mechanical lock comprising a side-release connector (claim 30), wherein the side-release connector includes a male portion and a female portion (claim 31).

Although the claims do not explicitly set forth a "buckle", the Examiner takes an Official notice that buckles are notorious well known in the marine art involving diving equipment as mechanical locks/connectors of choice, wherein the buckle is designed to expose a portion of the male buckle section through a corresponding opening in the female buckle section to enable an easy disengagement of the two sections. It would have been obvious for one skilled in the art at the time of the invention to use a buckle as a preferred mechanical lock/connector in the system of Angelini et al. ('480), which would have provided an interlocking mechanism that was not only securely attachable, but also easily and quickly detachable.

Applicant may additionally note that the structure recited in the conflicting apparatus claims of Angelini et al. ('480) meets all functional limitations set forth in the claims of the instant application. Applicant is reminded that while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the conflicting claims in terms of structure rather than function alone. Even when the conflicting claims fail to explicitly disclose limitations recited as functional language, if the conflicting claims (i) disclose all claimed structural limitations and (ii) the disclosed structure is capable of performing the recited function, the prior art meets the requirements of the claim.

Note: Because Applicant did not challenge or adequately traverse the Official Notice taken by the Examiner in the previous Office action, the limitation under Official Notice is now considered as admitted prior art.

Allowable Subject Matter

3. Claims 9-11 are allowed.
4. Claims 7, 8, 19 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
5. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome the rejection of claims 2-6, 12, 13 and 16-18 based on a nonstatutory double patenting ground, provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Response to Arguments

6. Regarding the rejection of claims 2-6, 12, 13 and 16-18 based on the nonstatutory double patenting ground, Applicant's has expressed a willingness to file a disclaimer in the instant application. However, no such disclaimer has been received in the instant application to date.

It is noted that the intent of a nonstatutory double patenting rejection is (i) to prevent the unjustified or improper timewise extension of the right granted by a patent, and (ii) to prevent possible harassment by multiple assignees. Applicant can overcome such a rejection by filing a terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d), provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Regarding the issue of Applicant's agreement with Johnson Outdoors (*to receive royalties*) qualifying as a common ownership requirement for filing a Terminal Disclaimer, it is noted that there is no record yet of any assignment being made in the instant Application. Therefore, the Examiner is unable to make a determination of the common ownership.

However, if the Applicant is unable to file a terminal disclaimer, Applicant can alternatively overcome the rejection by amending the claims to define over the '480 reference.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ajay Vasudeva whose telephone number is (571) 272-6689. The examiner can normally be reached on Monday-Friday 12:00 -- 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Joe Morano can be reached on (571) 272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ajay Vasudeva/
Primary Examiner
Art Unit 3617